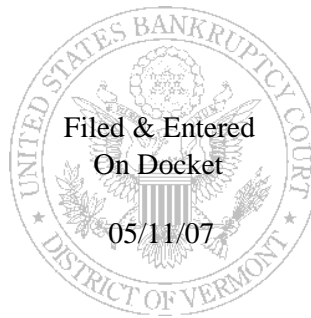


UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT

In re:

Daniel E. Block,
Debtor.



Chapter 13 Case
#07-10122

Dismissing Trustee's Motion for Declaratory Judgment

At the confirmation hearing held in this chapter 13 case on April 5, 2007, a question arose as to whether the Debtor's plan could be confirmed where the Debtor was proposing to make monthly payments in the amount of \$750 based on schedules I and J; the means test form indicated the Debtor had a monthly disposable income of \$1,480; and the Debtor testified that the figures on the means test form did not accurately reflect his current or future income. The chapter 13 trustee made an oral motion requesting a determination of whether it was proper to compute the Debtor's plan payment based upon schedules I and J, but did not assert any objection to confirmation of the plan. The Court confirmed the plan, and anticipated issuing a memorandum of decision to address the question raised by the trustee's request for declaratory judgment.


The text of 11 U.S.C. § 1325(b)(1), concerning confirmation of a chapter 13 plan, sets out the prerequisites necessary for this Court to adjudicate the Trustee's motion. The statute provides: "If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan," then the court may not approve the plan unless either "the value of the property distributed under the plan on account of such claim is not less than the amount of such claim" or the plan provides that "all of the debtor's projected disposable income to be received in the applicable commitment period . . . will be applied to make payments to the unsecured creditors under the plan." § 1325(b)(1)(A), (B) (emphasis added).

Neither the Trustee in this case nor a holder of an allowed unsecured claim objected to the confirmation of the plan. As a result, there is no justiciable controversy before the Court and any decision based upon the Trustee's motion would amount to the issuance of an advisory opinion. See Starter Corp. v. Converse, Inc., 84 F.3d 592, 595 (2d Cir. 1996).

Accordingly, IT IS HEREBY ORDERED that the Trustee's motion is dismissed.

SO ORDERED.

May 11, 2007
Rutland, Vermont


Colleen A. Brown
United States Bankruptcy Judge